

Appendix E1

Aquatic Invasive Species Interdiction Act

1st Sub. S.B. 238

LEGISLATIVE GENERAL COUNSEL

6 Approved for Filing: E.R. Brown 6

6 02-25-08 11:52 AM 6

S.B. 238

1st Sub. (Green)

SB0238S01

Senator Jon J. Greiner proposes the following substitute bill:

1 **AQUATIC INVASIVE SPECIES**

2 **INTERDICTION ACT**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Jon J. Greiner**

6 House Sponsor: Stephen H. Urquhart

7

8 **LONG TITLE**

9 **General Description:**

10 This bill amends and enacts provisions relating to the interdiction of invasive species.

11 **Highlighted Provisions:**

12 This bill:

13 < defines terms;

14 < prohibits the possession, release, or transportation of a Dreissena mussel;

15 < prohibits the transporting of a conveyance or equipment that has been in an infested
16 water without decontaminating the conveyance or equipment;

17 < requires a person who violates the chapter to reimburse the state's costs;

18 < establishes criminal penalties;

19 < authorizes the Division of Wildlife Resources to:

20 C stop, detain, inspect, impound, or quarantine a vehicle or vessel that may
21 contain a Dreissena mussel;

22 C conduct an administrative checkpoint;

23 C order a person to decontaminate a vessel or vehicle; and

24 C inspect, restrict access to, or close a water body, facility, or water supply system;

25 < prohibits the Division of Wildlife Resources from closing or quarantining a water

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26 supply system if a plan is implemented;

27 < requires the Division of Wildlife Resources to consult with an operator of a water
28 body, facility, or water supply system;

29 < requires a water supply system to cooperate with the Division of Wildlife Resources
30 and implement a plan if infected with the Dreissena mussel;

31 < requires a person to report the discovery of a Dreissena mussel to the Division of
32 Wildlife Resources;

33 < authorizes the Wildlife Board to make rules; and

34 < authorizes the division, a peace officer, or a port-of-entry agent to stop a driver at a
35 port-of-entry to check for invasive aquatic wildlife species.

36 **Monies Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 None

40 **Utah Code Sections Affected:**

41 AMENDS:

42 **72-9-501**, as last amended by Laws of Utah 2005, Chapter 2

43 ENACTS:

44 **23-27-101**, Utah Code Annotated 1953

45 **23-27-102**, Utah Code Annotated 1953

46 **23-27-201**, Utah Code Annotated 1953

47 **23-27-202**, Utah Code Annotated 1953

48 **23-27-301**, Utah Code Annotated 1953

49 **23-27-302**, Utah Code Annotated 1953

50 **23-27-303**, Utah Code Annotated 1953

51 **23-27-401**, Utah Code Annotated 1953

52

53 *Be it enacted by the Legislature of the state of Utah:*

54 Section 1. Section **23-27-101** is enacted to read:

55 **CHAPTER 27. AQUATIC INVASIVE SPECIES INTERDICTION ACT**

56 **Part 1. General Provisions**

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57 **23-27-101. Title.**

58 This chapter is known as the "Aquatic Invasive Species Interdiction Act."

59 Section 2. Section **23-27-102** is enacted to read:

60 **23-27-102. Definitions.**

61 As used in this chapter:

62 (1) "Board" means the Wildlife Board.

63 (2) (a) "Conveyance" means a terrestrial or aquatic vehicle or a vehicle part that may
64 carry or contain a Dreissena mussel.

65 (b) "Conveyance" includes a motor vehicle, a vessel, a motorboat, a sailboat, a personal
66 watercraft, a container, a trailer, a live well, or a bilge area.

67 (3) "Director" means the director of the division.

68 (4) "Decontaminate" means to:

69 (a) drain and dry all non-treated water; and

70 (b) chemically or thermally treat in accordance with rule.

71 (5) "Division " means the Division of Wildlife Resources.

72 (6) "Dreissena mussel" means a mussel of the genus Dreissena at any life stage,
73 including a zebra mussel, a quagga mussel, and Conrad's false mussel.

74 (7) "Equipment" means an article, tool, implement, or device capable of carrying or
75 containing:

76 (a) water; or

77 (b) a Dreissena mussel.

78 (8) "Executive director" means the executive director of the Department of Natural
79 Resources.

80 (9) "Facility" means a structure that is located within or adjacent to a water body.

81 (10) "Infested water" means a geographic region, water body, facility, or water supply

82 system within or outside the state that the board identifies in rule as carrying or
containing a

83 Dreissena mussel.

84 (11) "Water body" means natural or impounded surface water, including a stream,
85 river, spring, lake, reservoir, pond, wetland, tank, and fountain.

86 (12) (a) "Water supply system" means a system that treats, conveys, or distributes
87 water for irrigation, industrial, waste water treatment, or culinary use.

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88 (b) "Water supply system" includes a pump, canal, ditch, or pipeline.

89 (c) "Water supply system" does not include a water body.

90 Section 3. Section **23-27-201** is enacted to read:

91 Part 2. Invasive Species Prohibited

92 23-27-201. Invasive species prohibited.

93 (1) Except as authorized in this title or a board rule or order, a person may not:

94 (a) possess, import, export, ship, or transport a Dreissena mussel;

95 (b) release, place, plant, or cause to be released, placed, or planted a Dreissena mussel
96 in a water body, facility, or water supply system; or

97 (c) transport a conveyance or equipment that has been in an infested water within the
98 previous 30 days without decontaminating the conveyance or equipment.

99 (2) A person who violates Subsection (1):

100 (a) is strictly liable;

101 (b) is guilty of an infraction; and

102 (c) shall reimburse the state for all costs associated with detaining, quarantining, and
103 decontaminating the conveyance or equipment.

104 (3) A person who knowingly or intentionally violates Subsection (1) is guilty of a class
105 A misdemeanor.

106 Section 4. Section **23-27-202** is enacted to read:

107 23-27-202. Reporting of invasive species required.

108 (1) A person who discovers a Dreissena mussel within this state or has reason to
109 believe a Dreissena mussel may exist at a specific location shall immediately report the
110 discovery to the division.

111 (2) A person who violates Subsection (1) is guilty of a class A misdemeanor.

112 Section 5. Section **23-27-301** is enacted to read:

113 Part 3. Enforcement

114 23-27-301. Division's power to prevent invasive species infestation.

115 To eradicate and prevent the infestation of a Dreissena mussel, the division may:

116 (1) temporarily stop, detain, and inspect a conveyance or equipment that:

117 (a) the division reasonably believes is in violation of Section 23-27-201; or

118 (b) is stopped at a port-of-entry;

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119 (2) require a motor vehicle transporting a conveyance or equipment to stop for an
120 inspection at a port-of-entry if the Department of Transportation authorizes the division
to use

121 the port of entry;

122 (3) conduct an administrative checkpoint in accordance with Section 77-23-104;

123 (4) detain and quarantine a conveyance or equipment as provided in Section
124 23-27-302;

125 (5) order a person to decontaminate a conveyance or equipment; and

126 (6) inspect the following that may contain a Dreissena mussel:

127 (a) a water body;

128 (b) a facility; and

129 (c) a water supply system.

130 Section 6. Section **23-27-302** is enacted to read:

131 **23-27-302. Conveyance or equipment detainment or quarantine.**

132 (1) The division, a port-of-entry agent, or a peace officer may detain or quarantine a
133 conveyance or equipment if:

134 (a) the division, agent, or peace officer:

135 (i) finds the conveyance or equipment contains a Dreissena mussel; or

136 (ii) reasonably believes that the person transporting the conveyance or equipment is in
137 violation of Section 23-27-201; or

138 (b) the person transporting the conveyance or equipment refuses to submit to an
139 inspection authorized by Section 23-27-301.

140 (2) The detainment or quarantine authorized by Subsection (1) may continue for:

141 (a) up to five days; or

142 (b) the period of time necessary to:

143 (i) decontaminate the conveyance or equipment; and

144 (ii) ensure that a Dreissena mussel is not living on or in the conveyance or equipment.

145 Section 7. Section **23-27-303** is enacted to read:

146 **23-27-303. Closing a water body, facility, or water supply system.**

147 (1) Except as provided by Subsection (6), if the division detects or suspects a Dreissena
148 mussel is present in a water body, a facility, or a water supply system, the director or the
149 director's designee may, with the concurrence of the executive director, order:

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150 (a) the water body, facility, or water supply system closed to a conveyance or
151 equipment;

152 (b) restricted access by a conveyance or equipment to a water body, facility, or water
153 supply system; or

154 (c) a conveyance or equipment that is removed from or introduced to the water body,
155 facility, or water supply system to be inspected, quarantined, or decontaminated in a
manner

156 and for a duration necessary to detect and prevent the infestation of a Dreissena mussel.

157 (2) If a closure authorized by Subsection (1) lasts longer than seven days, the division
158 shall:

159 (a) provide a written update to the operator of the water body, facility, or water supply
160 system every ten days on the division's effort to address the Dreissena infestation; and

161 (b) post the update on the division's website.

162 (3) (a) The board shall develop procedures to ensure proper notification of a state,
163 federal, or local agency that is affected by a Dreissena mussel infestation.

164 (b) The notification shall include:

165 (i) the reasons for the closure, quarantine, or restriction; and

166 (ii) methods for providing updated information to the agency.

167 (4) When deciding the scope, duration, level, and type of restriction or a quarantine or
168 closure location, the director shall consult with the person with the jurisdiction, control,
or

169 management responsibility over the water body, facility, or water supply system to
avoid or

170 minimize disruption of economic and recreational activity.

171 (5) (a) A person that operates a water supply system shall cooperate with the division
172 to implement a measure to:

173 (i) avoid infestation by a Dreissena mussel; and

174 (ii) control or eradicate a Dreissena mussel infestation that may occur in a water supply
175 system.

176 (b) (i) If a Dreissena mussel is detected, the water supply system's operator, in

177 cooperation with the division, shall prepare and implement a plan to control or eradicate
a

178 Dreissena mussel within the water supply system.

179 (ii) A plan required by Subsection (5)(b)(i) shall include a:

180 (A) method for determining the scope and extent of the infestation;

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181 (B) method to control or eradicate the Dreissena mussel;

182 (C) method to decontaminate the water supply system containing the Dreissena mussel;

183 (D) systematic monitoring program to determine a change in the infestation; and

184 (E) requirement to update or revise the plan in conformity with a scientific advance in

185 the method of controlling or eradicating a Dreissena mussel.

186 (6) (a) The division may not close or quarantine a water supply system if the operator

187 has prepared and implemented a plan to control or eradicate a Dreissena mussel in
accordance

188 with Subsection (5).

189 (b) (i) The division may require the operator to update a plan.

190 (ii) If the operator fails to update or revise a plan, the division may close or quarantine

191 the water supply system in accordance with this section.

192 Section 8. Section **23-27-401** is enacted to read:

193 Part 4. Administration

194 23-27-401. Rulemaking authority.

195 In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
196 board may make rules that:

197 (1) establish the procedures and requirements for decontaminating a conveyance or
198 equipment to prevent the introduction and infestation of a Dreissena mussel;

199 (2) establish the requirements necessary to provide proof that a conveyance or
200 equipment is decontaminated;

201 (3) establish the notification procedures required in Section 23-27-303;

202 (4) identify the geographic area, water body, facility, or water supply system that is
203 infested by Dreissena mussels;

204 (5) establish a procedure and protocol in cooperation with the Department of
205 Transportation for stopping, inspecting, detaining and decontaminating a conveyance or
206 equipment at a port-of-entry in accordance with Section 23-27-301; and

207 (6) are necessary to administer and enforce the provisions of this chapter.

208 Section 9. Section **72-9-501** is amended to read:

209 **72-9-501. Construction, operation, and maintenance of ports-of-entry by the**
210 **department -- Function of ports-of-entry -- Checking and citation powers of**
211 **port-of-entry**

211 **agents.**

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212 (1) (a) The department shall construct ports-of-entry for the purpose of checking motor
213 carriers, drivers, vehicles, and vehicle loads for compliance with state and federal laws
214 including laws relating to:

215 (i) driver qualifications;

216 (ii) Title 53, Chapter 3, Part 4, Uniform Commercial Driver License Act;

217 (iii) vehicle registration;

218 (iv) fuel tax payment;

219 (v) vehicle size, weight, and load;

220 (vi) security or insurance;

221 (vii) this chapter;

222 (viii) hazardous material as defined under 49 U.S.C. 5102;

223 (ix) livestock transportation; and
224 (x) safety.
225 (b) The ports-of-entry shall be located on state highways at sites determined by the
226 department.
227 (2) (a) The ports-of-entry shall be operated and maintained by the department.
228 (b) A port-of-entry agent or a peace officer may check, inspect, or test drivers, vehicles,
229 and vehicle loads for compliance with state and federal laws specified in Subsection (1).
230 (3) (a) A port-of-entry agent or a peace officer, in whose presence an offense described
231 in this section is committed, may:
232 (i) issue and deliver a misdemeanor or infraction citation under Section 77-7-18;
233 (ii) request and administer chemical tests to determine blood alcohol concentration in
234 compliance with Section 41-6a-515;
235 (iii) place a driver out-of-service in accordance with Section 53-3-417; and
236 (iv) serve a driver with notice of the Driver License Division of the Department of
237 Public Safety's intention to disqualify the driver's privilege to drive a commercial motor
vehicle
238 in accordance with Section 53-3-418.
239 (b) This section does not grant actual arrest powers as defined in Section 77-7-1 to a
240 port-of-entry agent who is not a peace officer or special function officer designated
under Title
241 53, Chapter 13, Peace Officer Classifications.
242 (4) (a) A port-of-entry agent, a peace officer, or the Division of Wildlife Resources
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243 may inspect, detain, or quarantine a conveyance or equipment in accordance with
Sections
244 23-27-301 and 23-27-302.
245 (b) The department is not responsible for decontaminating a conveyance or equipment
246 detained or quarantined.
247 (c) The Division of Wildlife Resources may decontaminate, as defined in Section
248 23-27-102, a conveyance or equipment at the port-of-entry if authorized by the
department.
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